IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

WP(C).No. 23617 of 2006(J)

PETITIONERS:

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1. LATHEESH C.P., CHANDRABEETH PULLOLI HOUSE, CHALA P.O., KANNUR.

2. AJAYAKUMAR K.V., KULATHUVAYAL HOUSE, NADUVANED P.O., KANNUR.

3. SATHI.M., KAYYIL HOUSE, VADAKAM, KOZHIKODE.

4. GOPALAN.A., VAZHAYIL MEETHAL HOUSE, MUCHUKUNNU, QUILANDI, KOZHIKODE.

5. KACHANAVALLY T.P., ARAYANGODE, PARACHARITHAZHAM, KOZHIKODE.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. REGIONAL OFFICE OF THE KERALA STATE CO-OPERATIVE CONSUMER FEDERATION, TRIVENI BUILDING MUTHALAKULAM, KOZHIKODE REP.BY ITS REGIONAL DIRECTOR.

2. KERALA STATE CO-OPERATIVE CONSUMER FEDERATION, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, TRIVANDRUM.

BY ADV. SRI.M.PATHROSMATHAI (S.C.for R2)
SRI.RONY J.PALLATH
BY SENIOR GOVT. PLEADER SRI.P.N.SANTHOSH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

W.P.(C) No. 23617 of 2006

Dated this the 13th November, 2006.

J U D G M E N T

The writ petitioners are before this Court praying to direct the respondents to allow them to continue on the same post, and not to engage any other persons, except the petitioners, in the post where the petitioners have worked so far.

2. Respondents 1 and 2 are represented by the Senior Standing Counsel, Sri. Pathros Mathai, and the 3rd respondent is represented by the Senior Government Pleader, Sri.P.N.Santhosh. I heard the arguments advanced by all concerned.

3. The complaint of the writ petitioners is that without allowing them to work as casual labourers under the first respondent, they are employing other persons from the open market, which is against the law, and, therefore, the prayer is to allow them to continue to do the work, under the first respondent, till the guidelines laid down by the Division Bench in Manoj and Others v. State of Kerala & others, in O.P.No.21971/2002 and connected cases, are implemented.

4. The directions contained in the Division Bench judgment dated 31.8.2006, are as follows:-

> "(1) All regular posts vacant should be notified for appointment. All regular posts now held by temporary hands shall be reported in accordance with the rules.
>
> (2) No temporary hands shall be appointed to the regular vacancy.
>
> (3) All vacancies shall be reported to the Public Service Commission within six months from the date of receipt of copy of this judgment. All posts manned by temporary employees for more than one year continuously shall be treated as permanent post.
>
> (4) As far as upper age limit is concerned for regular appointments, the temporary employees who are working in the Corporation for more than six months, shall be given age relaxation. But there shall not be any relaxation in the matter of basic qualifications.
>
> (5) The temporary employees working in the regular post shall be allowed to continue in service only until these posts are filled up by regular appointments.
>
> (6) If any casual or other employees are necessary hereafter, they can be appointed only through employment exchange and such employees will not get any right for regularisation on any account as they shall not be allowed to work for more than six months. We further make it clear that regular vacancies should be notified and regular appointments should be made as expeditiously as possible."

5. However, the learned counsel appearing for the second respondent under which the first respondent comes submitted that the writ petitioners are not working under the regular vacancies, and the work which they have done, cannot be considered as the work having done under the regular post. He also submitted that the temporary/casual hands, such as the writ petitioners herein, are not needed for continuing with the work under respondents 1 and 2.

6. In the guidelines issued by the Division Bench, as quoted above, in clause (3), the court has directed that all posts manned by temporary employees for more than one year continuously shall be treated as permanent post. However, counsel for the second respondent, relied on **State of Haryana and another v. Tilak Raj and Others** *(2003 (6) SCC 123),* where in the Apex Court has held that, "a scale of pay is attached to a definite post, and in case of a daily wager, he holds no post."

7. The above position has been followed by the Apex Court in **M.P.Housing Board and another v. Manoj Shrivastava** *(2006 (2) SCC 702) .* At paragraph 15, the Apex Court reiterated that, "daily- wager does not hold *a* post unless he is appointed in terms of the Act and Rules framed therein. He does not derive any legal right in relation there to."

8. Admittedly, the writ petitioners are the daily-wage earners. There is no post attached to their work. Hence, they do not derive any legal right as to be appointed on a regular post.

9. Following the directions contained in the Division Bench ruling in Manoj Shrivastava's case, cited above, it was stipulated that the temporary employees working in the regular post shall be allowed to continue in service only until these posts are filled up by regular appointments. In that case also, it is with regard to the 'Regular post', but that does not relate to causal or temporary labourers. The Division Bench also stipulated to treat all posts manned by temporary employees, for more than one year continuously as permanent posts, but as the writ petitioners were not manning any post, this stipulation of the Division Bench will not be applicable to them. Therefore, the prayer of the writ petitioners that they be allowed to continue under respondents 1 and 2 as temporary/casual labourers cannot be accepted.

10. At this juncture, the learned counsel for the writ petitioners submitted that without permitting the employees to work, respondents 1 and 2 are deploying persons from the open market for extraneous consideration. But this has been denied by respondents 1 and 2, on the ground that they do not have any casual/temporary employees, at present, under their control.

11. However, I make it clear that the writ petitioners shall be allowed to work as causal/temporary employees in the establishment of respondents 1 and 2, till the casual/temporary employees are inducted, as directed by the Division Bench, from or through the employment exchange.

12. In the light of the above discussions, I find that the writ petitioners cannot claim for any right, as such, and, therefore, the prayer that they alone be engaged as casual/temporary employees, and not to deploy any one else, even from employment exchange, cannot be allowed.

Accordingly, this writ petition is dismissed.

J.M. JAMES,
JUDGE

nj.